

BEFORE THE
ILLINOIS COMMERCE COMMISSION

DOCKET NO. 03-0596

DIRECT TESTIMONY OF

GARY J. BALL

ON BEHALF OF

AT&T COMMUNICATIONS OF ILLINOIS, WORLDCOM, INC. D/B/A/ MCI, COVAD
COMMUNICATIONS COMPANY, ACCESS ONE, INC., CIMCO
COMMUNICATIONS, INC., FOCAL COMMUNICATIONS CORPORATION, FORTE
COMMUNICATIONS, INC., GLOBALCOM, INC., MPOWER COMMUNICATIONS
CORPORATION, ILLINOIS, INC., MCLEODUSA TELECOMMUNICATIONS
SERVICES, INC., AND TDS METROCOM, LLC

Regarding Dedicated Transport and High Capacity Loops

JOINT CLEC EXHIBIT 1.0

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I. INTRODUCTION OF WITNESS AND PURPOSE OF TESTIMONY.

Q1. PLEASE STATE YOUR FULL NAME, TITLE AND BUSINESS ADDRESS.

A1. My name is Gary J. Ball. I am an independent consultant providing analysis of regulatory issues and testimony for telecommunications companies. My business address is 47 Peaceable Street, Ridgefield, Connecticut 06877.

Q2. WHAT IS YOUR RELEVANT EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE?

A2. I graduated from the University of Michigan in 1986 with a Bachelor of Science degree in Electrical Engineering. I received a Masters in Business Administration from the University of North Carolina – Chapel Hill in 1991, with a concentration in economic and financial coursework. I have worked in the telecommunications industry for the past twelve years, and I have extensive experience in developing and analyzing financial and costing models associated with telecommunications networks and services, as well as the design, implementation, and operation of such networks and services.

From 1991 through 1993, I was employed by the Rochester Telephone Corporation (now part of Citizens Communications) where I served in various engineering, financial, and regulatory roles. From 1993 to 1994, I was the manager of Regulatory Affairs for Teleport Communications Group.

Beginning in 1994, I served initially as the Regional Director of Regulatory Affairs for MFS Communications Company for the Northeast, and was subsequently promoted to Assistant Vice President of Regulatory Affairs. In 1996, WorldCom acquired MFS, after which I was promoted to Vice President of Regulatory Policy Development. In that capacity, I was responsible for coordinating and developing the Company's regulatory positions on issues such as access charges, interconnection,

intercarrier compensation, unbundled network elements, and new service technologies. I remained at WorldCom until beginning my own consulting practice in 2002 .

Q3. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?

A3. I am testifying on behalf of the following competitive local exchange carriers ("CLECs"):
AT&T Communications of Illinois, Inc., Worldcom, Inc. d/b/a MCI, Covad
Communications Company, Access One, Inc., CIMCO Communications, Inc., Focal
Communications Corporation, Forte Communications, Inc., Globalcom, Inc., Mpower
Communications Corporation, XO Illinois, Inc., McLeodUSA Telecommunications
Services, Inc., and TDS Metrocom, LLC.

Q4. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A4. The purpose of my testimony is to analyze and rebut SBC's assertions as to the self-provisioning and wholesale triggers for high capacity loops and dedicated transport, as well as SBC's claims that numerous customer locations and transport routes satisfy the FCC's rigorous potential deployment requirements.

In its *Triennial Review Order* ("TRO"),¹ the FCC determined that incumbent local exchange carriers ("ILECs") must continue to provide CLECs with access to unbundled loops and dedicated transport at the DS1, DS3, and dark fiber capacity levels ("high-capacity loops" and "dedicated transport"). In support of this, the FCC conducted a comprehensive analysis that resulted in the determination that CLECs are impaired without access to high-capacity loops and dedicated transport at the national level.

¹ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket No. 01-338); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996* (CC Docket No. 96-98); *Deployment of Wireline Services Offering Advanced Telecommunications Capability* (CC Docket No. 98-147), FCC No. 03-36 (rel. Aug. 21, 2003).

Recognizing that there may be individual customer locations or transport routes where competitively provisioned loops and transport have been deployed to such an extent that CLECs may be deemed not to be impaired, the FCC developed a procedure known as the trigger analysis ("triggers"). The triggers are designed to give ILECs an opportunity to demonstrate to their respective state commissions that CLECs are not impaired without access to unbundled high-capacity loops or transport at *specific* customer locations or on *specific* dedicated transport routes for specific capacity levels.

In my testimony, I will show that SBC, through its witness J. Gary Smith, has grossly overstated the number of enterprise customer locations (i.e., buildings) and transport routes that satisfy the self-provisioning and wholesale triggers. Additionally, I will explain how SBC's potential deployment analysis for high capacity loops and transport fails to incorporate the FCC's location and route specific analysis, and as a result produces completely unjustifiable quantities of both loops and transport routes for which SBC erroneously contends that the Commission should make non-impairment findings and relieve SBC of its unbundling obligations.

Q5. HOW IS YOUR TESTIMONY ORGANIZED?

A5. My testimony is divided into eight sections. Section I is a discussion of my personal background and the general scope and purpose of my testimony. Section II discusses the FCC's impairment analysis and how it relates to the unbundled loop and transport services necessary for a facilities-based CLEC to effectively compete with the ILECs. In Section III, I will explain the self-provisioning triggers that the FCC devised for high capacity loops and dedicated transport at the DS3 and dark fiber capacity levels, and will provide the proper framework for interpreting any SBC claim that the triggers have been

met. In Section IV, I critique SBC's self-provisioning analysis. Section V explains the wholesale triggers for high capacity loops and transport, and will explain the additional requirements (which SBC has failed to address in its testimony) needed to define a carrier as a wholesale provider. In Section VI, I critique SBC's wholesale trigger analysis. In Section VII, I discuss the concept of potential deployment claims for high capacity loops and transport. In Section VIII, I critique SBC's potential deployment analysis. Lastly, in Section IX, I will describe the transitional issues this Commission should consider if it delists any loops or transport routes in order to protect CLECs and their customers from unanticipated disruption to their services and rates.

Q6. WHAT DOCUMENTS DID YOU REVIEW TO PREPARE TO GIVE THIS TESTIMONY?

A6. In preparation for this testimony, I have tried to review all of the materials relating to this proceeding, but with particular emphasis on TRO itself, the testimony submitted by SBC and accompanying attachments, the discovery requests and responses served by SBC, and the discovery requests and responses served by competing CLECs. In addition to these materials, I have reviewed compilations of the various discovery responses that were prepared by the Northridge Group, an independent consultant retained by some of the CLECs. I have also reviewed certain materials that were submitted to the FCC during its Triennial Review proceedings.

II. THE FCC CONCLUDED IN THE TRO THAT CLECS ARE IMPAIRED WITHOUT UNBUNDLED ACCESS TO HIGH-CAPACITY LOOPS AND DEDICATED TRANSPORT.

Q7. WHAT STANDARDS DID THE FCC APPLY TO DETERMINE IMPAIRMENT FOR UNBUNDLED NETWORK ELEMENTS?

A7. The FCC based its impairment findings upon a determination that “[a] requesting carrier is impaired when lack of access to an incumbent LEC network element poses a barrier or barriers to entry, including operational and economic barriers, that are likely to make entry into a market uneconomic.” *TRO* ¶ 7. The FCC also found that “[a]ctual marketplace evidence is the most persuasive and useful evidence to determine whether impairment exists.”

Q8. WHAT DID THE FCC CONCLUDE SPECIFICALLY WITH REGARD TO HIGH-CAPACITY LOOPS AND DEDICATED TRANSPORT?

A8. The FCC concluded that competing carriers are impaired on a national level without access to unbundled high capacity loops (DS1, DS3, and dark fiber) and transport (DS1, DS3, and dark fiber). *See TRO* ¶ 202 (stating that “requesting carriers are impaired on a location-by-location basis without access to incumbent LEC loops nationwide.”); *see also TRO* ¶ 359 (stating that the FCC finds “on a national level that requesting carriers are impaired without access to unbundled dark fiber transport facilities ... [DS3 transport and DS1 transport].” As a result, the FCC rules require that competing carriers have access to unbundled loops and transport everywhere unless a state commission finds a lack of impairment as to specific routes.

Q9. DID THE FCC’S IMPAIRMENT ANALYSIS DISTINGUISH BETWEEN DIFFERENT TYPES OF UNBUNDLED LOOPS AND TRANSPORT?

A9. Yes. The FCC defined two distinct loop types: Mass Market Loops, representing voice-grade DS0-level loops, and Enterprise Market Loops, representing higher capacity loops, which typically are used by business customers. The FCC defined Enterprise Market Loops as loops at a capacity level of DS1 or above, and it analyzed these loops -- separately -- at the following capacity levels: OC(n), dark fiber, DS3, and DS1. For the

purposes of my testimony, the term "Enterprise Market Loops" is equivalent to high capacity loops.

The FCC segregated dedicated transport by levels of capacity before performing its impairment analysis, stating that this would "be the most informative manner to review the economic barriers to entry that affect how a competing carrier is impaired without access to unbundled transport." *TRO* ¶ 380. The FCC performed separate impairment analyses for OC(n) Transport, Dark Fiber Transport, DS3 Transport, and DS1 Transport.

Q10. WHAT WAS THE FCC'S BASIS FOR FINDING THAT COMPETING CARRIERS WERE IMPAIRED WITHOUT ACCESS TO HIGH-CAPACITY LOOPS AT THE DARK FIBER, DS3, AND DS1 CAPACITY LEVELS?

A10. The FCC's impairment analysis examines whether carriers can economically self-provision high-capacity loops, and if competitive alternatives exist to unbundled access to the ILEC's high-capacity loops. The FCC based its impairment finding regarding enterprise market loops at the dark fiber, DS3, and DS1 capacity levels in large part on the fact that the costs to construct loops and transport are fixed and sunk. The FCC stated that "[b]ecause the distribution portion of the loop serves a specific location, and installing and rewiring that loop is very expensive, most of the costs of constructing loops are sunk costs." *TRO* ¶ 205. The FCC concluded that it would be extremely difficult to recover these construction costs and be a viable competitor in the marketplace.

The FCC found that there are substantial economic and operational barriers to deploying loops. For example, the FCC found that "the cost to self-deploy local loops at any capacity is great . . . and that a competitive LEC that plans to self-deploy its facilities must target customer locations where there is sufficient demand from a potential customer base, usually a multitenant premises location, to generate a revenue stream that

could recover sunk construction costs of the underlying loop transmission facility”

TRO ¶ 303.

Q11. ARE THE BARRIERS TO DEPLOYING HIGH-CAPACITY LOOPS STRICTLY ECONOMIC IN NATURE?

A11. No. The FCC emphasized that other obstacles to deploying high capacity loops exist even if the carrier can overcome the cost issues. For example, carriers encounter barriers in obtaining reasonable and timely access to buildings and customer premises and in “convincing customers to accept the delays and uncertainty associated with deployment of alternative loop facilities.” *TRO* ¶ 303 (citations omitted).

Q12. WHAT WAS THE FCC'S BASIS FOR FINDING THAT COMPETING CARRIERS ARE IMPAIRED WITHOUT ACCESS TO UNBUNDLED DEDICATED TRANSPORT AT THE DARK FIBER, DS3, AND DS1 CAPACITY LEVELS?

A13. The FCC stated that its “impairment findings with respect to DS1, DS3, and dark fiber transport facilities recognize that competing carriers face substantial sunk costs and other barriers to self-deploy facilities and that competitive facilities are not available in a majority of locations, especially non-urban areas.” *TRO* ¶ 360 (citations omitted). The FCC concluded that it would be extremely difficult to recover these costs and to be a viable competitor in the marketplace. Indeed, the FCC concluded that “[d]eploying transport facilities is an expensive and time-consuming process for competitors, requiring substantial fixed and sunk costs.” *TRO* ¶ 371 (citations omitted). The FCC elaborated that the costs of self-deployment include collocation costs, fiber costs, costs to physically deploy the fiber, and costs to light the fiber. *Id.*

Q14. ARE THERE NON-ECONOMIC COSTS TO CONSTRUCTING DEDICATED TRANSPORT?

A14. Yes. CLECs also encounter delays in constructing dedicated transport due to having to obtain rights-of-way and other permits. *Id.*

Q15. DID THE FCC FIND THAT THERE WAS ANY EVIDENCE OF NON-IMPAIRMENT FOR HIGH-CAPACITY LOOPS AND DEDICATED TRANSPORT AT THE DARK FIBER, DS3, AND DS1 LEVELS?

A15. In making a national finding of impairment for loops and transport, the FCC found that any evidence of non-impairment was minimal. For example, the FCC found little evidence of deployment for DS1 loops and found "scant evidence of wholesale alternatives" for DS1 loops. *TRO* ¶¶ 298 (competitive loop deployment) & 325 (wholesale loop availability).

For transport, the FCC found that "alternative facilities are not available to competing carriers in a majority of areas." *TRO* ¶ 387. Indeed, even relying on ILEC data, which was not subject to cross-examination in the FCC proceeding, the FCC found that at most 13 percent of Bell Operating Company wire centers have a single competing carrier collocated using non-ILEC transport facilities. *TRO* fn. 1198.

Q16. ARE THE FCC'S FINDINGS ON IMPAIRMENT CONSISTENT WITH TYPICAL CLEC FACILITIES-BASED NETWORKS, INCLUDING THE NETWORKS OF THE CLECS ON WHOSE BEHALF YOU ARE TESTIFYING?

A16. Yes. While CLECs use a variety of entry strategies to provide services to their customers throughout Illinois, the CLECs on whose behalf I am testifying use facilities-based networks or depend upon access to UNEs from ILECs. Generally, these facilities-based CLECs have constructed one or more fiber rings of varying scope, and serve customers using those fiber rings when possible, although in a majority of instances, the CLEC will need access to unbundled loops and loop/transport combinations (i.e., "enhanced extended links", or "EELS") to provide service to customers. These fiber rings connect aggregation points, such as collocation arrangements, and major customer sites to the

carrier's switching or hub site. The collocation arrangements are typically used to aggregate unbundled loops as opposed to providing transport hubs.

Facilities-based CLEC networks typically rely on UNE loops to serve the majority of their customers, as the fixed and sunk costs associated with building out loop facilities, as well as the delays in constructing such facilities, would place the CLECs at such a disadvantage that they would not be able to compete with the ILECs. CLECs also use loop and transport UNEs in a combination commonly referred to as an EEL. CLECs need access to unbundled dedicated transport, so that, in conjunction with the use of EELs, they can access customers whose loops terminate in central offices where the CLECs are not collocated (or where they do not serve enough customers to warrant constructing separate CLEC facilities), thereby greatly expanding the scope of customers they can serve, thus directly benefiting customers and the competitive telecommunications market.

Depending upon the CLEC, network architectures often are composed of multiple fiber rings, which have been completed at different times and are in different stages of deployment, due to the timing and availability of construction funding, capacity issues, or, in some cases, acquisitions. In many situations, a CLEC will serve two ILEC central offices that are not on the same fiber ring. Although it is theoretically possible to connect central offices on different fiber rings (indeed it is "theoretically possible" to connect any two points), transport routes linking the two central offices are not generally provisioned in such circumstances.

III. SELF-PROVISIONING TRIGGERS FOR HIGH-CAPACITY LOOPS AND DEDICATED TRANSPORT.

Q17. WHAT IS THE PURPOSE OF THE FCC'S SELF-PROVISIONING TRIGGERS FOR UNBUNDLED LOOPS AND TRANSPORT?

A17. In the TRO, the FCC made a national finding that CLECs are impaired with respect to access to high-capacity loops and dedicated transport. The FCC allowed ILECs to challenge these impairment findings on a location- and route-specific basis before state commissions. One of the ways ILECs may demonstrate non-impairment is by showing that CLECs themselves provide, to a sufficient degree, high-capacity loops and dedicated transport on their own. These are known as the "Self-Provisioning Triggers."

The Self-Provisioning Triggers are intended to identify those customer locations and transport routes where there exists sufficient deployment of competitively owned facilities to demonstrate that competitors are not impaired without access to unbundled loops and transport, even if the competitors that own those facilities do not make them available to other competitive providers.

Q18. WHAT CAPACITY LEVELS ARE SUBJECT TO THE SELF-PROVISIONING TRIGGERS?

A18. The Self-Provisioning Triggers only apply to DS3 and dark fiber loops and transport. DS1 loops and transport are not included under these triggers. SBC agrees with this. *See* SBC Illinois Ex. 1.0 PUBLIC Smith Testimony at 21-22 (transport) and SBC Illinois Ex. 2.0 PUBLIC Smith Testimony at 12 (loops).

Q19. WHAT MUST SBC DEMONSTRATE TO THE COMMISSION TO SATISFY THE SELF-PROVISIONING TRIGGERS AT THE RELEVANT CAPACITY LEVEL?

A19. For loops, the SBC must demonstrate that there are *two or more* competing providers that have deployed their own facilities at the specific capacity level (DS3 or dark fiber), and

that they are serving customers using those facilities. For transport, SBC must demonstrate there are *three or more* competing providers that have deployed their own facilities at the specific capacity level (DS3 or dark fiber), and that they are offering service using those facilities.

Q20. WHAT MUST SBC DEMONSTRATE TO PROVE THAT THE SELF-PROVISIONING TRIGGER IS SATISFIED FOR HIGH-CAPACITY LOOPS AT A SPECIFIC CUSTOMER LOCATION?

A20. As a preliminary matter, SBC must demonstrate that the two competitive providers:

- Are not affiliated with each other or SBC;
- Use their own facilities and not facilities owned or controlled by the other competitive provider or SBC; and
- Are serving customers using their own facilities at that location over the relevant capacity level.

Q21. WHAT MUST SBC DEMONSTRATE TO PROVE THAT THE SELF-PROVISIONING TRIGGER IS SATISFIED FOR DEDICATED TRANSPORT BETWEEN TWO SBC WIRE CENTERS?

A21. SBC must demonstrate that, for each of the three competitive providers, that:

- They not affiliated with each other or the SBC;
- Each counted self-provisioned facility along a route must be operationally ready to provide transport into or out of an SBC central office;
- Each counted self-provisioned facility terminates in a collocation arrangement.

Q22. FOR THE SELF-PROVISIONING TRIGGERS TO APPLY, MUST A CLEC SELF-PROVISION THE SPECIFIC CAPACITY LEVEL IN QUESTION?

A22. Yes. The *Triennial Review Order* contemplates that the Self-Provisioning Triggers apply when a CLEC self-provisions the particular capacity level in question. For example, a CLEC that self-provisions at the OC(n) capacity level does not necessarily self-provision at the DS1 or DS3 capacity level.

Q23. WHAT ARE THE KEY TERMS UNDER THE SELF-PROVISIONING TRIGGERS FOR WHICH THE COMMISSION MUST ENSURE THAT SBC IS USING THE APPROPRIATE INTERPRETATION?

A23. The first key issue is to ensure that the SBC is defining loops and transport routes in a manner consistent with the FCC, and is applying those definitions appropriately. For loops, the FCC's definition is "the connection between the relevant service central office and the network interface device ("NID") or equivalent point of demarcation at a specific customer premises."

The FCC defined a transport route as "a connection between wire center or switch 'A' and wire center or switch 'Z'." The FCC elaborated that "even if, on the incumbent LEC's network, a transport circuit from 'A' to 'Z' passes through an intermediate wire center 'X,' the competing providers must *offer service* connecting wire centers 'A' and 'Z,' but do not have to mirror the network path of the incumbent LEC through wire center 'X'." Thus, the FCC requires that transport service must be offered between the two wire centers in question.

Q24. WHAT IS THE APPROPRIATE EVIDENCE THAT SBC SHOULD PROVIDE TO MEET THE FCC'S REQUIREMENT OF OPERATIONAL READINESS FOR THE SELF-PROVISIONING TRIGGERS?

A24. The only effective and practical way of demonstrating that a CLEC is operationally ready under the Self-Provisioning Triggers is to produce evidence that the CLEC is actually providing service at the customer location or on the given transport route. This is consistent with the FCC's requirement that evidence be provided that CLECs are *serving* customers using self-provisioned loop services, and that CLECs *offer service* between two wire centers on a given transport route. While the existence of CLEC facilities is obviously a prerequisite to the provision of service, the mere existence of such facilities does not demonstrate whether the equipment can be used to provide the service to satisfy

the trigger, whether the CLEC can provide service at the requisite capacity level, nor whether the CLEC has performed the necessary engineering, provisioning, and administrative tasks to ensure that service can be provided at all or in a sufficiently timely manner to permit provisioning services to customers seeking the services within a competitive timeframe.

Q25. FOR PURPOSES OF APPLYING THE TRIGGERS, WHICH FACILITIES COUNT AS "OWNED FACILITIES"?

A25. In order for facilities to count as "owned", the carrier must have deployed its "own facilities" on the entire loop. There are two ways that a carrier can have ownership over the facilities: (1) the carrier can have legal title to the facilities or (2) the carrier can have a "long-term" (*i.e.*, 10 years or more) dark fiber indefeasible right of use ("IRU") if the fiber is lit by the qualifying carrier by attaching its own optronics to the facilities. If the carrier does not use its own facilities, then the carrier cannot count for purposes of the self-provisioning trigger.

Q26. WHICH FACILITIES DO NOT COUNT AS "OWNED FACILITIES"?

A26. Facilities obtained from other sources such as through special access arrangements, UNEs, capacity leases (unless they are long term IRUs), and all third party provided facilities do not count as "owned facilities." The FCC specifically emphasized that a CLEC "using the special access facilities of the incumbent LEC or the transmission facilities of the other competitive provider ... would *not* satisfy the definition of a self-provisioning competitor for purposes of the trigger." *TRO* ¶ 333.

In addition, the triggers are designed to prevent double counting of facilities. Therefore, for purposes of the self-provisioning test, a carrier may not be using "facilities

owned or controlled by one of the other two providers on the premises [for loops]." TRO ¶ 333.

Q27. IF A CARRIER SATISFIES THE REQUIREMENTS FOR THE SELF-PROVISIONING TRIGGERS, WILL IT AUTOMATICALLY QUALIFY AS AN ELIGIBLE PROVIDER UNDER THE COMPETITIVE WHOLESALE FACILITIES TRIGGERS OR VICE VERSA?

A27. No. The FCC emphasized that the triggers are separate and distinct. The purpose of the Self-Provisioning Trigger is to determine through actual experience whether similar situated CLECs feasibly can deploy their own facilities on a particular route. In contrast, the Wholesale Trigger examines whether the provider makes its facilities available to other carriers. Some wholesale carriers also may self-provide facilities to serve their own retail customers. However, other wholesale carriers may not provide any retail service and thus cannot be self-provisioners under the triggers. Obviously, if every wholesale carrier was also counted as a "self-provisioner" solely by virtue of the fact that it owns facilities, it would eliminate the distinction between these two triggers.

IV. CRITIQUE OF SBC ILLINOIS' SELF-PROVISIONING TRIGGER ANALYSIS.

A. HIGH CAPACITY LOOPS

Q28. HAVE YOU REVIEWED SBC'S TESTIMONY CONCERNING THE APPLICATION OF THE SELF-PROVISIONING TRIGGER TO HIGH CAPACITY LOOPS?

A28. Yes, I have reviewed the testimony of J. Gary Smith (SBC Ex. 2.0) at pages 21-24.

Q29. WHAT WERE THE CONCLUSIONS OF THE SELF-PROVISIONING TRIGGER ANALYSIS AS PROVIDED BY SBC?

A29. SBC has asserted that 122 customer loop locations satisfy the self-provisioning trigger. The specific customer locations are listed on Attachments 8 and 9 to Mr. Smith's loop testimony.

Q30. PLEASE DESCRIBE THE PROCESS SBC USED TO IDENTIFY HIGH CAPACITY LOOP LOCATIONS FOR ITS SELF-PROVISIONING TRIGGER ANALYSIS.

A30. SBC developed a list of buildings/customer locations for which it claims competitive providers have deployed fiber optic facilities, using two sources: discovery directly from the competitive providers, and indirect information generated by GeoResults, which is a third-party market research firm. For each building on the list for which it identified, from these sources, SBC asserts that two or more competitive providers are providing services and thus that the self-provisioning trigger has been met.

Q31. DID SBC APPROPRIATELY IMPLEMENT THE SELF-PROVISIONING TRIGGER FOR HIGH CAPACITY LOOPS?

A31. No. SBC has grossly overstated the number of customer locations for which the self-provisioning loop trigger is met. There are three main reasons for this: First, SBC incorrectly included buildings for which one or more of the CLECs identified does not have full access to all of the customers in the building. Second, SBC incorrectly included buildings for which one or more of the CLECs identified specifically denies providing DS3 or Dark Fiber loops. Third, SBC used unverified data from GeoResults, meaning it did not confirm with the competitive providers as to whether the GeoResults information is accurate, and if so, what the relevant capacity levels for the building are, nor did it confirm that the buildings met the specific requirements the FCC rules establish for the self-provisioning triggers, such as operational readiness, ownership of facilities, and access to the entire building.

Q32. PLEASE EXPLAIN HOW YOU WERE ABLE TO DETERMINE THAT SBC INCORRECTLY INCLUDED BUILDINGS ON ITS LIST FOR WHICH ONE OR MORE OF THE COMPETITIVE PROVIDERS IDENTIFIED DOES NOT HAVE ACCESS TO THE ENTIRE BUILDING.

A32. I reviewed the discovery responses from competitive providers who were identified as self-providers. In their responses, three prominent competitive providers (AT&T, MCI, and XO) indicated, for each building location where they had a loop, whether they had access to the entire building or just restricted space to an individual customer location. From my review, I determined that SBC included numerous buildings on its list for which the competitive provider indicated that it cannot serve the entire building. These buildings are identified on **Attachment 1** to my testimony, designated with a CR (meaning "collo restricted") in the column titled "Filter." If some or most of the customers in a building are not capable of being served by a competitive provider, that building obviously should not be listed as being served by the competitive provider for purposes of the self-provisioning trigger.

Q33. PLEASE EXPLAIN HOW YOU WERE ABLE TO DETERMINE THAT SBC INCLUDED BUILDINGS FOR WHICH ONE OR MORE OF THE COMPETITIVE PROVIDERS IDENTIFIED BY SBC STATED IT DOES NOT PROVIDE ANY SORT OF DS3 OR DARK FIBER CAPACITY LEVELS AT THOSE BUILDINGS?

A33. In discovery responses, one of the competitive providers (XO) stated the specific quantities of service it was providing at each capacity level. Based on my review of the discovery responses, in several instances, SBC included a building served by that provider, even though the provider indicated that it had not provisioned any DS3s to that building. Other competitive providers, such as Yipes, Abovenet, and Level 3, did not indicate specific capacity levels at their locations. Since these providers characterize themselves generally as broadband providers, it is reasonable to assume that they are most likely providing an OC(n) level of service into their buildings, unless indicated otherwise. To the extent that the provider either indicated it specifically does not provide DS3 services or is a broadband provider that did not indicate specific capacity

levels, those buildings were filtered out, and given a designation of NDS3 ("no DS3s") in the "Filters" column of Attachment 1.

Q34. SHOULD THE BUILDINGS IDENTIFIED BY GEORESULTS BE INCLUDED IN THE SELF-PROVISIONING ANALYSIS?

A34. Not solely on that basis. The buildings identified by GeoResults were not identified by competitive carriers through the discovery process, and in some cases conflict with the competitive providers' own data; thus these buildings should not be used unless validated by the competitive providers themselves. For example, GeoResults indicates that there are six buildings to which MCI purportedly provides facilities, but those six buildings do not appear on the list of buildings that MCI asserts its facilities serve, and that list was to provided in response to SBC's first set of discovery well in advance of the November 24 date on which SBC circulated its direct testimony. Despite having in its possession information that contradicted the GeoResults claims, SBC included the GeoResults information in its triggering analysis. Even if the GeoResults data was correct in terms of a competitive provider offering service into a building, additional evidence as to the nature of the competitive carrier's services into that building must be gathered, including whether the competitive carrier owns the facilities, whether the facilities are operationally ready, what capacity levels are being provided, and whether they have access to the entire building. This is necessary because many carriers actually utilize SBC's loop and transport services to expand the reach of their networks and therefore many of the buildings identified may actually be served by SBC's own facilities. Buildings excluded based upon reliance on GeoResults data indicated in the "Filter" column of Attachment 1, with the designation "GeoResults."

Q35. AFTER FILTERING OUT THE BUILDINGS SBC ERRONEOUSLY INCLUDED, HOW MANY BUILDINGS DID YOU DETERMINE MET THE SELF-PROVISIONING TRIGGER AT THE DARK FIBER CAPACITY LEVEL?

A35. Once I had corrected SBC's errors, I did not identify any buildings in which two or more competitive providers acknowledged providing dark fiber loops. Therefore, the Commission should not make any finding of non-impairment at the dark fiber capacity level under the self-provisioning trigger for loops.

Q36. AFTER FILTERING OUT THE BUILDINGS SBC ERRONEOUSLY INCLUDED, HOW MANY BUILDINGS DID YOU DETERMINE MET THE SELF-PROVISIONING TRIGGER AT THE DS3 CAPACITY LEVEL?

A36. After filtering out the buildings in which (1) one or more of the identified CLECs does not have access to the entire building, (2) one or more of the identified CLEC does not provide any DS3 service, and (3) those CLECs identified only by GeoResults, I concluded that 30 buildings (of the 122 identified by SBC) would be potential candidates to meet the self-provisioning trigger for DS3 level loops. I have listed those 30 buildings in **Attachment 2**. These are the only buildings in which two or more competitive carriers are actually providing service at the DS3 capacity levels, and for which the carriers have indicated that they have access to the entire building. Even these 30 buildings require further examination to validate that all of the requirements of the self-provisioning requirements, including operational readiness and facilities ownership, are truly being met for each carrier. It is especially important to ensure that the carriers designated can actually serve the entire building in question, and are not limited to a single customer or floor.

B. DEDICATED TRANSPORT

Q37. HAVE YOU REVIEWED SBC'S TESTIMONY CONCERNING THE APPLICATION OF THE SELF-PROVISIONING TRIGGER TO DEDICATED TRANSPORT ROUTES?

A37. Yes, I have reviewed the testimony of J. Gary Smith (SBC Ex. 1.0) at pages 22-31.

Q38. WHAT WERE THE CONCLUSIONS OF THE SELF-PROVISIONING TRIGGER ANALYSIS AS PROVIDED BY SBC?

A38. SBC has asserted that 127 routes satisfy the self-provisioning trigger. The specific routes are listed on Attachment 10 to Mr. Smith's dedicated transport testimony.

Q39. WHAT WAS THE PROCESS SBC USED TO IDENTIFY THE 127 DEDICATED TRANSPORT ROUTES THAT IT CLAIMS SATISFY THE SELF-PROVISIONING TRIGGER?

A39. Similar to his process for loops, SBC witness Smith developed a list of wire centers at which competitive providers have established collocation arrangements based upon information gathered in discovery and through examination of their own collocation records. SBC then simply assumed that transport routes exist between each and every collocation arrangement for a given carrier for both the DS3 and dark fiber capacity levels.

Q40. DID SBC PERFORM THE APPROPRIATE ANALYSIS TO DEMONSTRATE THAT THE SELF-PROVISIONING TRIGGERS WERE SATISFIED FOR DEDICATED TRANSPORT?

A40. No. Instead of collecting and analyzing information on specific routes between wire centers "a" and "z" for each competing provider as required by the FCC, SBC only gathered enough information to implement what I call its "connect the dots" methodology, in which it simply assumes that transport routes exist between each and every collocation arrangement for a given carrier, without regard for the carrier's actual use of the collocation arrangement. Additionally, in my review of the discovery, I saw no

information from competitive providers that could be construed to mean that the provider is providing dedicated transport at the specific DS3 or dark fiber levels. This should not be surprising, as, consistent with the FCC's findings, carriers generally can only cost-justify constructing their own transport routes if they have enough traffic to warrant OC(n) level capacity levels.

Q41. PLEASE EXPLAIN YOUR POSITION THAT SBC HAS FAILED TO PRESENT THE INFORMATION NECESSARY TO IDENTIFY ROUTES SERVED BY COMPETITIVE PROVIDERS.

A41. As I stated in Section III above, the FCC has defined dedicated transport as "a connection between wire center or switch 'A' and wire center or switch 'Z'." The FCC elaborated that "even if, on the incumbent LEC's network, a transport circuit from 'A' to 'Z' passes through an intermediate wire center 'X,' the competing providers must *offer service* connecting wire centers 'A' and 'Z,' but do not have to mirror the network path of the incumbent LEC through wire center 'X'." Without this information it is impossible to determine that any of the routes in question actually satisfy the triggers.

Q42. WHY IS IT NECESSARY FOR SBC TO DEMONSTRATE THAT TRANSPORT SERVICE IS BEING PROVIDED ON EACH ROUTE?

A42. As I stated earlier in my testimony, CLECs generally establish collocation arrangements for the purpose of aggregating unbundled loop facilities, and as a result they will typically place loop aggregation equipment such as digital loop carrier systems (DLCs) or digital subscriber line access multiplexers (DSLAMs) in these collocations. As most transport out of a wire center collocation is routed to a CLEC node or interexchange carrier point of presence, it will be an unusual occurrence for a CLEC to have provisioned a connection between two ILEC wire centers, unless there are customer locations in each wire center that need to be connected. Because collocations are

generally not used for transport between ILEC wire centers, SBC's "connect the dots" approach drastically overstates the number of actual transport routes connecting wire centers and cannot be used for the Trigger analysis.

Q43. WHY WAS IT NECESSARY FOR SBC TO IDENTIFY THE SPECIFIC CAPACITY LEVELS IN SERVICE AT EACH LOCATION?

A43. Similar to loops, it is essential that equipment being used for OC(n) level services be distinguished from equipment providing DS3 or dark fiber transport. As the FCC determined, carriers generally configure transport facilities at much higher capacity levels than a DS3, so a reasonable assumption is that, even if there really is a connection between two SBC wire centers, it is most likely at an OC(n) level of capacity, which would make it inapplicable for the self-provisioning trigger.

Q44. BASED UPON THE INFORMATION PRESENTED BY SBC, IS IT POSSIBLE TO DETERMINE WHETHER ANY TRANSPORT ROUTES IN ILLINOIS MEET THE SELF-PROVISIONING TRIGGER?

A44. No. Due to the fundamental errors in SBC's approach, it has not collected or presented the appropriate information. The only information that SBC has presented or collected at the present time is an over-inclusive list of collocations, each of which may or may not be currently part of a transport route, and as to each potential route, the capacity level is undetermined.

Q45. HAVE YOU BEEN ABLE TO ELIMINATE ANY OF THE WIRE CENTER COLLOCATION ARRANGEMENTS SBC IDENTIFIED BASED UPON LACK OF THE APPROPRIATE CAPACITY LEVELS?

A45. Yes. Based upon the CLECs' discovery responses, I did not identify any wire center collocation arrangements for which 3 or more CLECs indicated that transport at the DS3 level is being provided. I did identify 7 collocation arrangements for which 3 or more CLECs indicate that transport at the dark fiber capacity level may be available, which,

using SBC's "connect the dots" approach would result in 21 potential transport routes.

The CLLI code for these wire centers are listed in **Attachment 3** to my testimony

Q46. TO BE CLEAR, DO THE 21 POTENTIAL TRANSPORT ROUTES MENTIONED ABOVE MEET THE SELF-PROVISIONING TRIGGER?

A46. No. These routes still need to be examined to determine whether connections exist at the dark fiber capacity level for 3 or more carriers between each endpoint, consistent with the FCC requirement.

Q47. ARE THERE ANY OTHER FLAWS THAT YOU OBSERVED IN SBC'S ANALYSIS AS TO DEDICATED TRANSPORT?

A47. Yes. In addition to the fact that SBC failed to elicit the appropriate data concerning connections between wire centers, SBC also did not attempt to determine for any of the identified routes whether the routes pass through a CLEC switch. To constitute dedicated transport under the self-provisioning trigger, not only must all or part of the facility be dedicated to a particular carrier or use, but also there cannot be any switching interposed along the transport route. For example, if a CLEC has a transport route that runs from its collocation space to its own switch, that route is not dedicated transport under the TRO and may not be counted toward the self-provisioning (or wholesale) trigger.

Q48. HAVE YOU DETERMINED WHETHER SBC HAS A DIFFERENT POSITION ON THIS ISSUE?

A48. It appears that SBC agrees that this is the appropriate interpretation of the TRO because Mr. Smith made this same statement in his testimony. On page 4 of his dedicated transport testimony (Question 6), Mr. Smith was asked to define "dedicated transport" and he gave the following response: "Dedicated transport' means all or part of the facility is dedicated to a particular carrier or use *and that there is no switching interposed along the route.*" (emphasis added).

Q49. HOW SHOULD THE COMMISSION PROCEED TO THE EXTENT THAT SBC HAS NOT COLLECTED ALL OF THE DATA NECESSARY TO DEMONSTRATE THE TRIGGERS?

A49. It is important to avoid rushing to judgment in cases for which the appropriate data has not been collected. The CLECs will be irreparably harmed if they are denied access to loops or transport for locations or routes where they are truly impaired. It is hard to imagine how SBC will be harmed if extra time is taken to collect the data appropriate to ensuring that true competitive alternatives exist.

V. WHOLESALE TRIGGERS FOR HIGH-CAPACITY LOOPS AND DEDICATED TRANSPORT.

Q50. WHAT IS THE PURPOSE OF THE FCC'S WHOLESALE TRIGGERS FOR HIGH CAPACITY LOOPS AND DEDICATED TRANSPORT?

A50. In the TRO, the FCC made a national finding that CLECs were impaired with respect to access to high-capacity loops and dedicated transport. The FCC allowed that ILECs may challenge these impairment findings on a location- and route-specific basis before the state commissions. One of the ways SBC could demonstrate non-impairment is by showing that other carriers sufficiently offer high-capacity loops and dedicated transport on a wholesale basis. These are known as the "Wholesale Triggers."

The Wholesale Triggers provide SBC an opportunity demonstrate that there is no impairment for a specific customer location or route by identifying locations for which there are alternative providers offering wholesale loop and transport services to CLECs. In addition to evidence provided under the self-provisioning trigger, SBC is also obliged to demonstrate that the alternative provider: (1) is actually offering wholesale service for the specific route or location at the requisite capacity level; (2) has equipped its network

to facilitate numerous wholesale customers; and (3) has developed the appropriate systems and procedures to manage a wholesale business.

Q51. WHAT CAPACITY LEVELS ARE SUBJECT TO THE WHOLESALE TRIGGERS FOR HIGH CAPACITY LOOPS AND TRANSPORT?

A51. Wholesale loops and transport at both the DS1 and DS3 level are subject to the Wholesale Triggers. Dark fiber *loops* are not subject to the Wholesale Trigger, while dark fiber *transport* is.

Q52. WHAT MUST SBC DEMONSTRATE TO THIS COMMISSION TO SATISFY THE WHOLESALE TRIGGERS FOR HIGH-CAPACITY LOOPS AND DEDICATED TRANSPORT?

A52. The Wholesale Triggers examine whether there are competing providers offering a bona fide product at the specific location or on the specific route.

Q53. WHAT MUST SBC DEMONSTRATE TO SATISFY THE WHOLESALE PROVISIONING TRIGGER FOR HIGH-CAPACITY LOOPS?

A53. Specifically, under the FCC's rules, this trigger requires evidence that:

- Two or more competing providers not affiliated with each other or SBC are present at the customer location;
- Each provider has deployed its own facilities and is operationally ready to use those facilities to provide wholesale loops at that location;
- Each provider is willing to provide wholesale loops on a widely available basis at that location; and
- Each provider has access to the entire multiunit customer premises. *See* 47 C.F.R. § 51.319(a)(5)(i)(B).

Q54. WHAT MUST SBC DEMONSTRATE TO SATISFY THE WHOLESALE PROVISIONING TRIGGER FOR DEDICATED TRANSPORT?

A54. The wholesale trigger for dedicated transport requires specific evidence that:

- Two or more competing providers not affiliated with each other or with SBC are present on the route;

- Each provider has deployed its own transport facilities “and is operationally ready to use those facilities to provide dedicated ... transport along the particular route”;
- Each provider “is willing immediately to provide, on a widely available basis,” dedicated transport to other carriers on that route;
- Each provider’s “facilities terminate in a collocation arrangement at each end of the transport route that is located at an incumbent LEC premises *and* in a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises”; and
- Requesting telecommunications carriers are able to obtain reasonable and nondiscriminatory access to the competing provider's facilities through a cross-connect to the competing provider’s collocation arrangement.

See 47 C.F.R. § 51.319(e)(1)(ii) [DS1 transport], 51.319(e)(2)(i)(B) [DS3 transport], 51.319(e)(3)(i)(B) [dark fiber transport].

Q55. FOR THE WHOLESALE TRIGGERS TO APPLY, MUST A CARRIER OFFER AT WHOLESALE THE SPECIFIC CAPACITY LEVEL IN QUESTION?

A55. Yes. The *Triennial Review Order* contemplates that the Wholesale Triggers apply when a carrier offers for wholesale the particular capacity level in question. For example, a carrier that is a wholesale provider of loops or transport at the OC(n) capacity level would not necessarily offer on a “widely available” basis loops or transport at the DS1 and DS3 levels.

Q56. IN ADDITION TO THE ISSUES YOU HAVE IDENTIFIED THAT NEED TO BE ADDRESSED IN THE SELF-PROVISIONING ANALYSIS, ARE THERE ADDITIONAL ISSUES SBC NEEDS TO ADDRESS IN ORDER TO SATISFY THE WHOLESALE TRIGGERS?

A56. Yes. A significant threshold issue is to ensure that SBC is not overly broad in its identification of wholesale providers. Many carriers may provide some wholesale services, but may not be in a position to offer the specific loop or transport services necessary to satisfy the Wholesale Triggers. For example, a carrier may offer wholesale long distance voice services, and may also have established collocation arrangements for

the self-provision of a data service for a specific retail customer. The fact that the carrier is a wholesale provider of an unrelated service is not relevant to the trigger analysis if the carrier is not offering wholesale services specific to its collocation arrangements.

Q57. ARE THERE ADDITIONAL ISSUES RELATED TO HIGH-CAPACITY LOOPS THAT NEED TO BE ADDRESSED FOR THE WHOLESALE TRIGGER?

A57. Yes. First, each loop must terminate at a location that affords alternative providers access to the entire customer premises – including, in multi-tenant buildings, access to the same common space, house, and riser, and other intra-building wire as SBC enjoys. If a loop does not provide alternative providers with access to the entire customer premises, then the carrier providing the loop should not be counted for purposes of either the wholesale or the self-provisioning trigger. With regard to the Wholesale Triggers, in particular, without access to the entire customer premises, that carrier is not truly offering an alternative wholesale service.

Second, the high-capacity loop in question must provide a connection into SBC's central office. Competitors must be able to connect a wholesale loop with another carrier's transport, with their own collocated facilities, or with SBC UNE transport.

Q58. DOES THE REQUIREMENT OF OPERATIONAL READINESS NEED TO BE EXPANDED FOR THE WHOLESALE TRIGGERS?

A58. Yes. In addition to the requirements of the self-provisioning triggers, SBC must demonstrate that the wholesale provider is operationally ready and willing to provide transport to other carriers at each capacity level. At a minimum, SBC must show that each wholesale provider:

- Has sufficient systems, methods and procedures for pre-ordering, ordering, provisioning, maintenance and repair, and billing;

- Possesses the ability to actually provision wholesale high-capacity loops to each specific customer location identified or to provide dedicated transport along the identified route;
- For loops, has access to an entire multi-unit customer premises;
- Is capable of providing transport at a comparable level of capacity, quality, and reliability as that provided by SBC;
- For transport, is collocated in each central office at the end point of each transport route;
- Has the ability to provide wholesale high capacity loops and transport in reasonably foreseeable quantities, including having reasonable quantities of additional, currently installed capacity;
- Reasonably can be expected to provide wholesale loop and transport capacity on a going-forward basis; and
- Can provide service in a commercially reasonable timeframe, because if it takes too long to receive service customers will not sign up with CLECs.

Q59. WHAT DOES "WIDELY AVAILABLE" MEAN FOR THE WHOLESALE FACILITIES TRIGGERS?

A59. To be widely available, service must be made available on a common carrier basis, for example, through a tariff or standard contract. An offer to negotiate an individualized private carriage contract does not constitute being widely available. In addition, each carrier identified as a wholesale provider must be able "immediately to provide" wholesale service. 47 C.F.R. § 51.319(e). If the carrier is required to construct facilities in order for the service to be made available, then the service is not widely available.

Q60. WHAT DOES IT MEAN TO HAVE REASONABLE ACCESS TO THE WHOLESALE PROVIDER?

A60. Requesting carriers must be able to access cross-connects at nondiscriminatory rates, terms, and conditions in accordance with FCC and state commission rules. In addition, SBC must provide requesting carriers with adequate cross-connect terminations at cost-based rates, and must enable sufficient capacity expansion. If carriers are not able to

cross connect at the SBC central office, then they cannot obtain access to the wholesale providers' facilities.

As I stated above, for a competitive wholesale market to be in place, there must be proper systems and processes for ordering and provisioning. In addition, carriers must be able to obtain from the wholesale provider the service at nondiscriminatory rates and on nondiscriminatory intervals. Requesting carriers also must be able to order circuits to terminate in all qualified wholesale providers' collocation space.

Q61. WHAT ARE THE REMAINING STEPS?

A61. Once the Commission has determined the appropriate application of the triggers, then it must gather the evidence for each route and location identified by SBC. As I stated above, SBC is responsible for challenging the national finding of impairment and must provide specific evidence that a trigger is satisfied for each route or transport for which it challenges the FCC's national finding. SBC then must demonstrate that the competing carriers that it has identified indeed satisfy a trigger for the particular loop location or transport route at issue. SBC's evidence must be differentiated among each capacity type and for each loop location or transport route.

Once SBC has put forth the routes that it intends to challenge and the supporting evidence, then the Commission must evaluate whether the carriers that SBC has identified as satisfying a trigger for each loop location or transport route meet the FCC's qualifying criteria. The Commission then must classify the location or route as impaired or not impaired based on all of evidence that the parties have submitted.

Q62. IF THIS COMMISSION FINDS THAT A TRIGGER IS SATISFIED, IS IT REQUIRED TO MAKE A FINDING OF IMPAIRMENT ON A PARTICULAR LOOP LOCATION OR TRANSPORT ROUTE?

A62. No. If the Commission finds that a trigger is facially satisfied but believes that impairment still exists, then the Commission may petition the FCC for a waiver of application of the trigger until the barrier to deployment identified by the Commission no longer exists. For example, in the *Triennial Review Order*, the FCC explained that a state commission might find impairment – despite the existence of a trigger – if “a municipality has imposed a long-term moratorium on obtaining the necessary rights-of-way such that a competing carrier can not deploy new facilities.” *TRO* ¶ 411. As another example, ILECs have claimed collocation exhaust in many central offices. If a CLEC cannot collocate in one or both of the central offices on a route, then CLECs clearly remain impaired on that route, regardless of whether a trigger is facially satisfied.

VI. CRITIQUE OF SBC ILLINOIS' WHOLESALE TRIGGER ANALYSES.

A. HIGH CAPACITY LOOPS

Q63. HAVE YOU REVIEWED SBC'S TESTIMONY CONCERNING THE APPLICATION OF THE WHOLESALE TRIGGER TO HIGH CAPACITY LOOPS?

A63. Yes, I have reviewed the testimony of J. Gary Smith (SBC Ex. 2.0) at pages 24-26.

Q64. WHAT WERE THE CONCLUSIONS OF THE WHOLESALE TRIGGER ANALYSIS AS PROVIDED BY SBC.

A64. SBC has asserted that the same 122 buildings that it claimed for the self-provisioning trigger meet the wholesale trigger. The specific customer locations are listed on Attachment 12 to Mr. Smith's loop testimony.

Q65. WHAT WAS THE PROCESS SBC USED TO IDENTIFY THE 122 BUILDINGS THAT IT CLAIMS SATISFY THE WHOLESALE TRIGGER?

A65. SBC apparently started with the same list of buildings that is used for the self-provisioning trigger. Then, SBC claims to have looked at information on carrier websites

and in discovery responses to determine whether any of the carriers advertised themselves as providing any sort of wholesale service. For each carrier which SBC identified as a provider of wholesale services in this manner, it then assumed that the carrier offered wholesale service on all of its loops. As a result, it concluded that the wholesale trigger was satisfied for the same 122 buildings it claims meet the self-provisioning trigger.

Q66. IS SBC'S APPROACH TO IMPLEMENTING THE WHOLESALE TRIGGER FOR HIGH CAPACITY LOOPS CORRECT?

A66. No. As I described in Section IV above, SBC grossly overstated the number of buildings satisfying the self-provisioning trigger. To the extent that SBC is attempting to use the same list for the wholesale triggers, the list suffers from the same defects. SBC has compounded the problem by overstating the extent to which carriers provide wholesale services. In lieu of providing evidence that the alternative providers SBC identifies meet the wholesale requirements (e.g., that the provider is actually offering wholesale service for the location in question, has equipped its network to facilitate wholesale customers, and has systems and procedures to manage a wholesale business, see above), it instead has plucked quotes from magazine articles and web sites out of context and with no link the wholesaling of loops or to the locations for which SBC claims the trigger is met. Moreover, SBC has simply made an assumption that DS1 capacity level service is available for every building, without any supporting evidence whatsoever from the competitive providers.

Q67. PLEASE REITERATE THE DEFICIENCIES YOU NOTED IN CONNECTION WITH SBC'S SELF-PROVISIONING ANALYSIS THAT RESULTED IN THE OVER-INCLUSION OF BUILDINGS LOCATIONS.

A67. As I explained in Section IV above, SBC overstated the number of buildings that satisfy the self-provisioning trigger due to three major flaws in its analysis: (1) the inclusion of buildings in which at least one competitive provider does not have access to the entire building, (2) the inclusion of buildings for which one of the carriers stated it does not provide the DS3 or dark fiber capacity, and (3) the use of unverified information on third party building locations which in some instances conflicts with the data provided by the competing carriers. I note that, in his wholesale trigger discussion, Mr. Smith appears to concede that SBC does not presently have sufficient information on whether competing providers have access to each building, because he says that "this analysis is ongoing." (p. 26).

Q68. HAVE YOU IDENTIFIED ANY AFFIRMATIVE EVIDENCE IN ANY OF THE DISCOVERY OR MATERIALS PROVIDED BY SBC INDICATING THAT ANY WHOLESALE LOOP SERVICES ARE BEING PROVIDED FOR THE BUILDINGS ON SBC'S LIST FOR ANY CAPACITY LEVEL?

A68. No. None of the materials I reviewed indicated that any of the competitive providers was providing wholesale service for any of the buildings.

Q69. DID SBC PROPERLY VERIFY THE AVAILABILITY OF DS1 LOOP SERVICES ON A WHOLESALE BASIS FOR THE BUILDINGS IT LISTED?

A69. No. According to witness Smith on page 26 of his testimony, SBC simply made an assumption that any existing fiber facility can provide DS1-level service. This assumption is not correct. DS1-level service can only be provided when a fiber facility has been equipped with the appropriate electronics, including an optical multiplexer with the capability of provisioning DS1 channels. The FCC was very clear in its requirement that wholesale service must be available at the specific capacity level in order for the trigger to be satisfied.

Q70. BASED UPON YOUR OWN REVIEW OF THE DISCOVERY RESPONSES, WHAT HAVE YOU CONCLUDED AS TO WHETHER THE WHOLESALE TRIGGER FOR LOOPS HAS BEEN MET?

A70. None of the buildings SBC listed in Smith Attachment 12 meet the wholesale trigger at either the DS1, DS3, or dark fiber capacity levels. Of the 122 buildings, all but the 30 buildings listed in **Attachment 2** of my testimony must be eliminated due to the same problems I identified with SBC's self-provisioning trigger analysis. Even as to those 30 buildings, SBC has not demonstrated that two competing providers are providing wholesale service in any manner that satisfies the TRO's requirements for this trigger.

Q71. DID THE FCC ANTICIPATE THAT A VERY SMALL NUMBER OF BUILDINGS WOULD SATISFY THE WHOLESALE TRIGGERS?

A71. Yes. In paragraph 338 of the TRO, the FCC stated that "We recognize that, while the record indicates that there are presently a limited number of alternative wholesale loop providers serving multiunit premises, we anticipate that a competitive market will continue to *develop*." (emphasis added).

B. DEDICATED TRANSPORT

Q72. HAVE YOU REVIEWED SBC'S TESTIMONY CONCERNING THE APPLICATION OF THE WHOLESALE TRIGGER TO DEDICATED TRANSPORT ROUTES?

A72. Yes, I have reviewed the testimony of J. Gary Smith (SBC Ex. 1.0) at pages 31-36.

Q73. WHAT WERE THE CONCLUSIONS OF THE WHOLESALE TRIGGER ANALYSIS AS PROVIDED BY SBC.

A73. SBC has asserted that 285 routes meet the wholesale trigger. This number includes not only the 127 routes that SBC claims satisfy the self-provisioning trigger, but also an additional 158 routes for which it claims there is evidence of only two competing providers, because the wholesale trigger only requires two providers (whereas the self-

provisioning trigger requires three). The specific transport routes are listed on Attachment 12 to Mr. Smith's loop testimony.

Q74. PLEASE DESCRIBE THE PROCESS SBC USED TO IDENTIFY DEDICATED TRANSPORT ROUTES THAT IT CONTENDS SATISFY THE WHOLESALE PROVISIONING TRIGGER.

A74. SBC used the same "connect the dots" approach to collecting data that I described above in my critique of the self-provisioning trigger. As the wholesale trigger only requires two carriers on each route, SBC provided a much larger list of routes than for the self-provisioning trigger. SBC used the same broad-brush approach to identify wholesale service providers as it used for loops, essentially assuming without supporting evidence that every competitive provider of transport is providing wholesale on each and every route.

Q75. DOES SBC'S ANALYSIS OF THE WHOLESALE TRIGGERS FOR TRANSPORT SATISFY THE FCC REQUIREMENTS?

A75. No. SBC's analysis of the wholesale trigger for transport incorporates all of the flaws of the self-provisioning analysis mentioned in Section IV. There are also several additional erroneous assumptions SBC makes specific to the wholesale requirements, including: (1) describing at least two competitors as wholesale providers even though these carriers specifically stated in discovery that they do not provide wholesale transport between wire centers; (2) basing its identification of wholesale providers primarily upon website references (the same problem I explained above with respect to loops); and (3) and listing routes for which it does not have evidence for the specific capacity levels.

Q76. PLEASE EXPLAIN HOW SBC ERRONEOUSLY LABELED COMPETITIVE PROVIDERS AS WHOLESALE PROVIDERS OF TRANSPORT BETWEEN SBC WIRE CENTERS?

A76. In my review of the discovery responses, I noted that three competitive carriers (AT&T, RCN/21st Century, and XO) specifically stated that they do not provide wholesale transport between ILEC wire centers. These specific declarations by these carriers show that they should not have been included on SBC's list of wholesale transport providers.

Q77. IS IT POSSIBLE FOR A CARRIER TO BE PROVIDING SERVICE TO ANOTHER CARRIER ON A GIVEN TRANSPORT ROUTE, BUT NOT BE CONSIDERED A WHOLESALE PROVIDER UNDER THE FCC TRIGGERS?

A77. Yes. A key requirement under the FCC triggers is that the wholesale service be widely and generally available. Carriers occasionally will provide service to other carriers on an individual case basis or based on unique circumstances. These types of individual contract-type arrangements cannot qualify for the wholesale trigger unless it can be demonstrated that the service at the specific location meets the FCC requirements that the service be widely available, and that requesting carriers have nondiscriminatory access to such arrangements.

Q78. IF THESE THREE PROVIDERS WHO STATE THAT THEY DO NOT PROVIDE WHOLESALE SERVICE UNDER THE FCC DEFINITION WERE ELIMINATED FROM THE LIST, WHAT WOULD BE THE IMPACT ON THE NUMBER OF TRANSPORT ROUTES UNDER SBC'S ILLEGITIMATE "CONNECT THE DOTS" METHODOLOGY?

A78. If the three providers were eliminated, the total number of routes would be reduced from 285 to 117. **Attachment 4** provides a route-specific listing of carriers that were filtered out.

Q79. ARE YOU PROPOSING THAT SBC'S METHODOLOGY BE ADOPTED WITH ADJUSTMENTS?

A79. No. I was merely showing the significant impact that some of SBC's arbitrary assumptions have on the results for the triggers. As I stated in my analysis of the self-

provisioning trigger analysis for transport, none of the routes SBC has claimed meets the FCC definition of a transport route, so they cannot be used to support the triggers.

Q80. WERE YOU ABLE TO ELIMINATE WIRE CENTER COLLOCATIONS FOR WHICH THE APPROPRIATE DS1, DS3, OR DARK FIBER CAPACITY LEVELS ARE NOT BEING PROVIDED?

A80. Yes. Based upon my review of the data provided by the CLECs, there are no wire center collocation arrangements from which 2 or more CLECs indicated that they were provisioning either DS1 or DS3 dedicated transport. I did identify 17 wire center collocation arrangements from which it appears there may be 2 or more CLECs providing dark fiber transport. Using SBC's "connect the dots" approach, this would provide 136 potential transport routes. The CLLI code for these wire center collocations are listed in Attachment 3.

Q81. BASED UPON YOUR REVIEW OF THE INFORMATION COLLECTED AND PROVIDED BY SBC, IS IT POSSIBLE TO DETERMINE WHETHER ANY BUILDINGS OR TRANSPORT ROUTES SATISFY THE WHOLESALE TRIGGERS?

A81. No. SBC has simply not made the showing necessary for a conclusion that the wholesale triggers have been met for any of the locations it has identified. As such, none of the buildings or transport routes qualify for the wholesale triggers.

VII. POTENTIAL DEPLOYMENT ANALYSIS FOR HIGH-CAPACITY LOOPS AND DEDICATED TRANSPORT.

Q82. PLEASE DESCRIBE WHAT IS MEANT BY POTENTIAL DEPLOYMENT.

A82. Under the self-provisioning Trigger, the FCC provides that SBC may attempt to demonstrate that no impairment exists for loop locations or transport routes even though the self-provisioning trigger has not been satisfied.

Q83. ARE DS1-CAPACITY LEVEL LOOPS AND TRANSPORT ELIGIBLE FOR A POTENTIAL DEPLOYMENT CLAIM?

A83. No. The FCC defined potential deployment as a theoretical substitute for the self-provisioning Trigger. As such, only those capacity levels eligible for the self-provisioning trigger (DS3 and Dark Fiber) are eligible for potential deployment claims.

Q84. CAN AN ILEC MAKE A GENERAL CLAIM FOR POTENTIAL DEPLOYMENT, SUCH AS A CLAIM THAT NO IMPAIRMENT EXISTS FOR ALL BUILDINGS SERVED OUT OF A WIRE CENTER?

A84. No. The FCC's language is clear that potential deployment claims must be location- or route-specific.

Q85. WHAT TYPE OF DEMONSTRATION MUST SBC MAKE IN ORDER TO SUCCESSFULLY PROVE NO IMPAIRMENT EXISTS AT A LOCATION OR ROUTE EVEN THOUGH THE TRIGGERS HAVE NOT BEEN MET?

A85. SBC must demonstrate *for each specific customer location and route* that, contrary to the FCC's impairment determination, multiple competitive providers would be able to overcome the significant operational and economic barriers identified by the FCC and still be able to compete successfully. SBC must therefore demonstrate that the competitive providers would earn sufficient revenues relative to their significant fixed and sunk costs of providing dark fiber loops or transport, and fewer than two DS3s of traffic for loops or 12 DS3s of traffic for transport (the maximum amount of capacity that CLECs may purchase as UNEs) or dark fiber loops and dedicated transport to cover the costs. Again, this demonstration must be location-specific.

Q86. WHAT ARE THE FACTORS THAT SBC MUST DEMONSTRATE TO THE COMMISSION TO SATISFY THE POTENTIAL DEPLOYMENT TEST FOR HIGH CAPACITY LOOPS TO A SPECIFIC CUSTOMER LOCATION?

A86. In paragraph 335 of the TRO, the FCC requires that "when conducting its customer location specific analyses, a state must consider and may also find no impairment at a particular customer location even when this trigger has not been facially met *if* the state commission finds that no material economic or operational barriers at a customer location

preclude competitive LECs from economically deploying loop transmission facilities to that particular customer location at the relevant loop capacity level. In making a determination that competitive LECs *could* economically deploy loop transmission facilities at that location at the relevant capacity level, the state commission must consider numerous factors affecting multiple CLECs' ability to economically deploy facilities at that particular customer location." The TRO then lists the following factors:

- Evidence of alternative loop deployment at that particular customer location;
- Local engineering costs of building and utilizing transmission facilities;
- The cost of underground or aerial laying of fiber or copper;
- The cost of equipment needed for transmission;
- Installation and other necessary costs involved in setting up service;
- Local topography such as hills and rivers;
- Availability of reasonable access to rights-of-way;
- Building access restrictions/costs; and
- Availability/feasibility of similar quality/reliability alternative transmission technologies at that particular location.

TRO ¶ 335.

Q87. WHAT ARE THE FACTORS THAT SBC MUST DEMONSTRATE TO THE COMMISSION TO SATISFY THE POTENTIAL DEPLOYMENT TEST FOR DEDICATED TRANSPORT ROUTES?

A87. For transport, the FCC also found that actual deployment is the best indicator of impairment, but noted that a state commission must also consider potential deployment for a particular route "that it finds is suitable for 'multiple, competitive supply,' but along which [the actual deployment] trigger is not facially satisfied." *Id.* ¶ 410. The factors

that the Commission must evaluate for transport are similar to those for loops and include the following characteristics:

- Local engineering costs of buildings and utilizing transmission facilities;
- The cost of underground or aerial laying of fiber;
- The cost of equipment needed for transmission;
- Installation and other necessary costs involved in setting up service;
- Local topography such as hills and rivers;
- Availability of reasonable access to rights-of-way;
- The availability or feasibility of alternative transmission technologies with similar quality and reliability;
- Customer density or addressable market; and
- Existing facilities-based competition.

TRO ¶ 410.

Each of these characteristics must be evaluated in the potential deployment analysis. For that reason, an ILEC that claims CLECs are not impaired without access to UNEs in serving a specific route will need to introduce evidence with respect to each factor that demonstrates that the factor alone, or in combination with others, does not operate as a barrier to CLECs' ability to deploy the facilities in question.

Q88. WITH RESPECT TO BOTH HIGH CAPACITY LOOPS AND DEDICATED TRANSPORT, WHAT SORT OF EVIDENCE MUST SBC OFFER WITH RESPECT TO CAPACITY LEVELS?

A88. Any evidence an ILEC presents on potential deployment will necessarily have to address the limitations on the availability of UNEs that are *already built in* to the FCC's new unbundling rules. Thus, with respect to loops, SBC's factual showing and analysis concerning potential deployment needs to explain how CLECs are not impaired in their

ability to deploy dark fiber loops or up to two DS3 loops at a specific customer location. TRO ¶ 324. Similarly, with respect to transport, SBC's analysis must reflect the FCC's decision that CLECs are impaired without unbundled access to dark fiber transport and twelve or fewer DS3s of transport along any given transport route. TRO ¶ 388.

Q89. DO YOU THINK IT IS LIKELY THAT MOST ILECS WOULD BE ABLE TO MAKE THIS SORT OF SHOWING?

A89. It is difficult to see how an ILEC would make such a detailed and site-specific showing. The FCC has already restricted the availability of loop and transport UNEs by placing strict limits on the capacity levels (2 DS3s for loops, 12 DS3s for transport) that any individual CLEC may obtain at a given location. The record before the FCC contained overwhelming evidence, summarized in the *TRO*, that CLECs remain impaired without the limited access granted by the *TRO* to UNEs at these lower-capacity levels, because "the potential revenue stream associated" with lower-capacity facilities "is many times smaller than that" of a higher-capacity facility. TRO ¶ 320 n.945. These lower revenues are highly unlikely to cover the high fixed and sunk costs of facilities deployment, *id.*, and compound the "other economic and operational barriers" that CLECs face in deploying their own facilities. TRO ¶ 320 & n. 946; *see, e.g.*, TRO ¶¶ 205-07, 298-99 & n.860, 302-06, 324-27 & n.954, 360, 370-71, 376, 381-93, 399. Moreover, loop economics depend upon certain best-case assumptions – such as the existence of a fiber transport ring with an access point (that is, a point where a lateral line may be attached to an add/drop multiplexer to allow interconnection between the loop facility and the fiber ring) close to the building in question – that may not be satisfied at any given location. Finally, no one seriously contests that "build it and they will come" is anything but a failed entry strategy, and that CLECs therefore need access to UNEs or wholesale